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ABSTRACT

The Department of Education's Office for Civil Rights (OCR) is charged with protecting fundamental rights to equal educational opportunity. During fiscal year (FY) 1990, OCR received 3,382 discrimination complaints, the highest number (as of that year) in the agency's history. OCR's National Enforcement Strategy, announced in 1990, was to focus the agency's available resources on high-priority educational equity issues. This document reports on OCR's compliance-review and technical-assistance activities. Chapter 1 presents an organizational overview of the OCR--its role, relationship with other federal agencies, structure, and compliance mechanisms. Chapter 2 presents examples of cases investigated in FY 1990 in which OCR secured voluntary corrective action from recipients of federal financial assistance. The third chapter provides examples of compliance activities in postsecondary education. Actions involving other recipients, such as state and local vocational rehabilitation agencies, proprietary schools, correctional institutions, libraries, and museums, are highlighted in chapter 4. Five figures and a list of addresses for regional Civil Rights Offices are included. (LMI)

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U.S. Department of Education
Office for Civil Rights

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ANNUAL REPORT TO CONGRESS

FISCAL YEAR 1990

U.S. DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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FOREWORD

To the Senate and the House of Representatives
of the United States of America
in Congress Assembled:

Education is the cornerstone of equal opportunity. Education is the vehicle by which Americans have satisfied their expectations and dreams for a better life. As a law enforcement agency, the Department of Education's Office for Civil Rights (OCR) is charged with protecting fundamental rights to equal educational opportunity. These rights are conferred in statutes that charge the Federal Government with the obligation to ensure that public monies do not support discrimination. Underlying these legal requirements is the pivotal role of education in our nation. Effective civil rights enforcement can help **all** persons in making the most of their individual capacities and talents.

During the period covered by this report (October 1, 1989 through September 30, 1990), relief from discrimination was sought and obtained in many areas of education. The majority of remedies came as a result of investigations based on complaints that the Office received during FY 1990. Altogether, OCR received 3,382 complaints, which was the largest number of regular complaints in the agency's history. As the report indicates, OCR's activities touch upon every level of education and, in many ways, on virtually every student.

Despite the high case load and complexity of compliance issues, OCR resolved discrimination complaints in accordance with tight, self-imposed time requirements. However, OCR was unable to target sufficient resources toward growing public concerns regarding the diminished educational opportunity for certain students. My own review of the compliance program, undertaken shortly after my confirmation as the Assistant Secretary for Civil Rights, suggested the need to address high priority educational equity issues in these areas. This will enable OCR to establish a more comprehensive and balanced enforcement program and focus its available resources on those important issues that can be more effectively addressed through OCR's compliance review and technical assistance activities.

To this end, I announced, on December 11, 1990, OCR's National Enforcement Strategy. The strategy will guide OCR's compliance efforts for the next two years and enable OCR to focus on high priority educational equity issues. The issues, which are identified in the report, also are relevant to the attainment of national goals aimed at improving access to quality education. I want to emphasize that in implementing the strategy, OCR will not abandon its responsibility to individual complainants. We must, however, ensure that our efforts to eliminate discrimination are used to the very best advantage.

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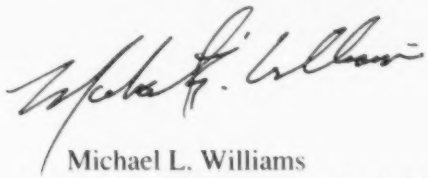
There is a compelling national interest in eliminating discrimination in our educational institutions. If present trends continue, 68 percent of workers entering the labor force between now and the year 2000 will be minorities and women. It is vital to our security and quality of life that from this diverse population our educational system has a steady stream of students who are ready, willing, and capable of learning. And it is vital to our ability to compete in the world economy that all students, minority and nonminority alike, are prepared for the new high technology and managerial jobs American business will create in the coming years.

I thank you in advance for your support of the OCR compliance program — a program leading to equal educational opportunity and quality education for all Americans.

Respectfully submitted,



Michael L. Williams
Assistant Secretary for Civil Rights

CHAPTER I - ORGANIZATIONAL OVERVIEW

ENFORCEMENT PARAMETERS

Statutory Responsibilities

The Office for Civil Rights (OCR) in the U.S. Department of Education (ED) is a law enforcement agency. Its primary responsibility is to ensure that recipients of Federal financial assistance do not discriminate against students, faculty, or other individuals on the basis of race, color, national origin, sex, handicap, or age.

OCR is responsible for enforcing the following Federal civil rights laws prohibiting discrimination in federally assisted educational programs and activities:

- Title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color, and national origin, 42 U.S.C. §2000d *et seq.* (implementing regulation at 34 C.F.R. Parts 100 and 101);
- Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex, 20 U.S.C. §1681 *et seq.* (implementing regulation at 34 C.F.R. Part 106);
- Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of physical and mental handicap, 29 U.S.C. §794 (implementing regulation at 34 C.F.R. Part 104); and
- The Age Discrimination Act of 1975 (ADA), which prohibits discrimination on the basis of age, 42 U.S.C. §6101 *et seq.*

Under these four statutes, OCR has jurisdiction over programs and activities that receive Federal financial assistance. Jurisdiction over programs and activities has been defined by the Civil Rights Restoration Act of 1987 as jurisdiction over all of the operations of a recipient.

The civil rights laws enforced by OCR extend to a wide range of recipients and beneficiaries of Federal funds. Recipients covered by the civil rights authorities enforced by OCR include all state education and rehabilitation agencies, and their subrecipients; the education and rehabilitation agencies of the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and the territories and possessions of the United States; virtually every school district and postsecondary institution; thousands of proprietary schools, libraries, museums, and correctional facilities; and other institutions that receive Federal financial assistance from ED.

Federal Civil Rights Relationships

In carrying out its civil rights enforcement responsibilities, OCR works with other Federal agencies, including the Department of Justice (DOJ), the Equal Employment Opportunity Commission (EEOC), and the Federal Mediation and Conciliation Service (FMCS).

DOJ, according to Executive Order 12250, is responsible for coordinating Federal Government agencies' enforcement of Title VI, Title IX, Section 504, and other Federal laws that prohibit discrimination on the basis of race, color, national origin, sex, handicap, or religion in programs conducted or assisted by the Federal Government. Primary enforcement responsibility remains with the individual agencies, while leadership and coordination responsibility, in areas other than employment, is vested in DOJ.

EEOC has primary coordinating authority under Executive Order 12067 for complaints of employment discrimination. OCR generally refers to EEOC those Title VI and Title IX complaints that allege discrimination solely in employment, when they are not systemic or class based in nature. Section 504 employment complaints are retained for processing by OCR.

EEOC also plays an important role in age discrimination cases. When individual complaints of discrimination in employment on the basis of age are filed with OCR, they are transferred to EEOC for investigation and resolution because OCR has no jurisdiction over these cases under the ADA.

OCR shares the responsibility with FMCS for processing age discrimination complaints that do not involve employment. OCR screens complaints alleging age discrimination to determine whether it has jurisdiction. If jurisdiction is established, the complaint is forwarded to FMCS for voluntary resolution. If FMCS is unsuccessful, or if either party does not agree to mediation by FMCS, OCR investigates the complaint in the same manner as complaints alleging other types of discrimination.

OCR works with ED's Office of Special Education and Rehabilitative Services to coordinate the enforcement of certain provisions of the Individuals with Disabilities Education Act with Section 504. OCR also works with the Department's Office of Elementary and Secondary Education to implement the civil rights provisions of Title III of the Elementary and Secondary Education Act of 1965, as amended, i.e., the Magnet Schools Assistance Program.

Civil Rights and National Education Goals

Among OCR's many concerns is the nondiscriminatory treatment of students in systems of elementary and secondary education and higher education; equal educational opportunities for female students in academic and athletic programs; equal opportunity in employment for faculty, staff, and administrators in schools and colleges; free appropriate public education for elementary and secondary school-aged students with handicaps; and equal educational opportunity for qualified handicapped persons with respect to postsecondary benefits and services. Thus, an effective civil rights program also advances the national education goals that the President and the nation's governors adopted in 1990. The goals address quality education and equality of educational opportunity in the context of established educational performance objectives. As noted below, several of the objectives focused specifically on minorities, females, and students with handicaps. These objectives include that by the year 2000:

- All disadvantaged and disabled children will have access to high quality and developmentally appropriate preschool programs that help prepare children for school.

- The gap in high school graduation rates between American students from minority backgrounds and their nonminority counterparts will be eliminated.

- The academic performance of elementary and secondary students will increase significantly in every quartile, and the distribution of minority students in each level will more closely reflect the student population as a whole.

- The number of United States undergraduate and graduate students, especially women and minorities, who complete degrees in mathematics, science, and engineering will increase significantly.

- The proportion of those qualified students, especially minorities, who enter college, who complete at least two years, and who complete their degree programs will increase substantially.

National Enforcement Strategy

On December 11, 1990, OCR issued a National Enforcement Strategy. The strategy will guide OCR's compliance efforts for the next two years and enable OCR to focus on high priority educational equity issues. These issues, which are identified in Chapters II and III, also are relevant to achieving the national education goals. The National Enforcement Strategy recognizes the interrelation of OCR's compliance activities in addressing the major educational equity issues. Effective implementation will require OCR's full range of resources, as well as coordination with other Federal offices and the general public.

ORGANIZATION

Structure

The Assistant Secretary for Civil Rights (AS) is responsible for OCR's overall operations and serves as principal adviser to the Secretary of Education on civil rights issues. The AS is assisted by the Deputy Assistant Secretary for Operations and the Deputy Assistant Secretary for Policy. OCR has ten regional offices that are responsible for a range of civil rights compliance responsibilities, including complaint investigations, compliance reviews, monitoring of corrective action plans, and technical assistance. Headquarters components provide legal, policy, operational, and management support services to the regions.

Staffing

OCR's staff ceiling for Fiscal Year (FY) 1990 was 820 full-time equivalent (FTE) positions (comprised of full-time permanent and other-than-full-time-permanent staff); 815 FTEs were actually used. Twenty-four percent of the staff were located in headquarters and 76 percent were divided among the ten regional offices.

Budget

OCR had a total funding level of $45,178,000 for FY 1990. Of this amount, $606,000 was sequestered to meet the requirements of the Gramm-Rudman-Hollings Act, resulting in a funding level of $44,572,000 available for obligation. Although this amounted to an increase over FY 1989's funding level of $41,635,000, it was insufficient to allow OCR to fund its full complement of FTEs during FY 1990 or to maintain the high level of compliance activities (e.g., compliance reviews and technical assistance) conducted in previous years.

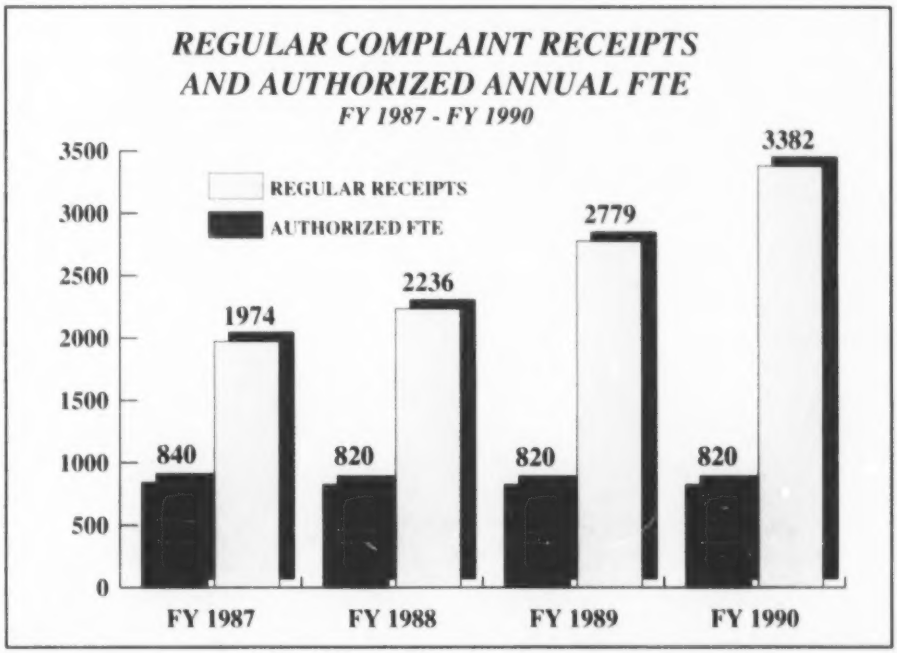
BUDGET AND STAFFING INFORMATION

FY	*Budget Estimate to Congress*	*Appropriation*	*Appropriation After Sequester/ Supplemental*	*Congressional Budget FTE Level*	*Actual FTE Usage*
1986	*44,181,000*	*44,580,000*	*42,704,000*	*907*	*843*
1987	*38,185,000*	*43,000,000*	*43,000,000*	*840*	*807*
1988	*42,676,000*	*40,530,000*	*40,530,000*	*820*	*808*
1989	*41,341,000*	*40,845,000*	*41,635,000*	*820*	*789*
1990	*45,178,000*	*45,178,000*	*44,572,000*	*820*	*815*
1991	*49,900,000*	*50,400,000*	*48,403,971*	*820*	—

Effect of the Civil Rights Restoration Act of 1987

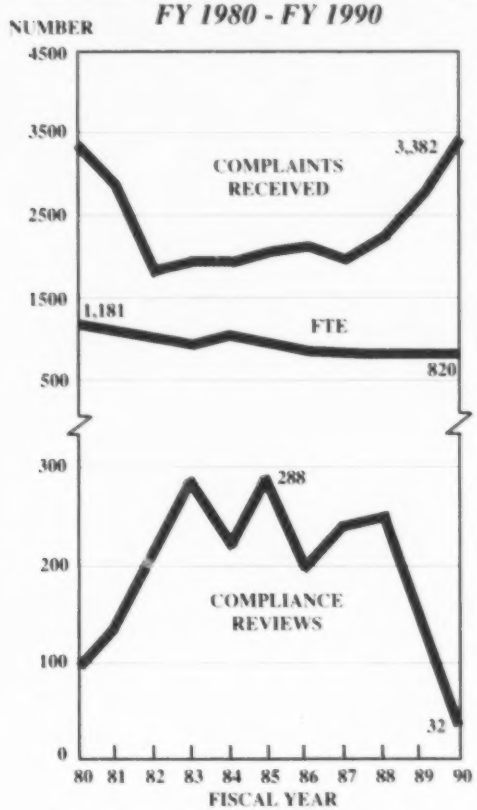
The Civil Rights Restoration Act (CRRA) was enacted on March 22, 1988. Under the CRRA each of the statutes OCR enforces is now applicable to **all of the operations** of a school system, college or university, or any other entity that is principally involved in providing education, so long as **any part** of the recipient's operations receives Federal funds. Since the enactment of CRRA, regular discrimination complaints (i.e., those not refiled due to the CRRA or repetitively filed by a single complainant) filed with OCR have increased dramatically and now exceed any previous level in the agency's history. In addition, OCR has received numerous complaints that require more labor-intensive investigations. As a result of the increased complaint work load in FY 1990, OCR was able to devote only 3 percent of its regional staff resources to compliance review investigations and only 3 percent to technical assistance activities.

The following chart illustrates the increase in the number of complaint receipts in relation to the number of FTEs.



The following chart further illustrates the changes in OCR activities as a result of the CRRA. Note that after 1987, the number of complaint receipts increased, the number of staff remained the same, and the number of compliance reviews decreased.

REGULAR COMPLAINTS, COMPLIANCE REVIEWS, AND FTE FY 1980 - FY 1990



NOTE: The y-axis is split to allow for differences in magnitude

COMPLIANCE MECHANISMS

To ensure equal opportunity in all Department funded programs and activities, OCR conducts a number of significant compliance activities. Principal among these is complaint investigations. OCR also conducts compliance reviews; monitors settlement agreements designed to bring States, schools, colleges, and other recipients into compliance with the laws; and provides technical assistance to encourage voluntary compliance.

Complaint Investigations, Including Age Discrimination

OCR's major activity is the investigation of complaints alleging discrimination. The investigation of a complaint involves fact-finding activities that include determining jurisdiction, developing an investigative plan, reviewing pertinent documents, analyzing statistical information, and interviewing appropriate parties. This information is used to prepare an investigative report, which includes recommendations about the issuance of a Letter of Findings (LOF), as well as recommendations for corrective action, if warranted. Before an LOF is issued, OCR attempts to obtain an appropriate compliance settlement. If this is unsuccessful, a violation LOF is issued, but OCR will continue efforts to obtain voluntary compliance.

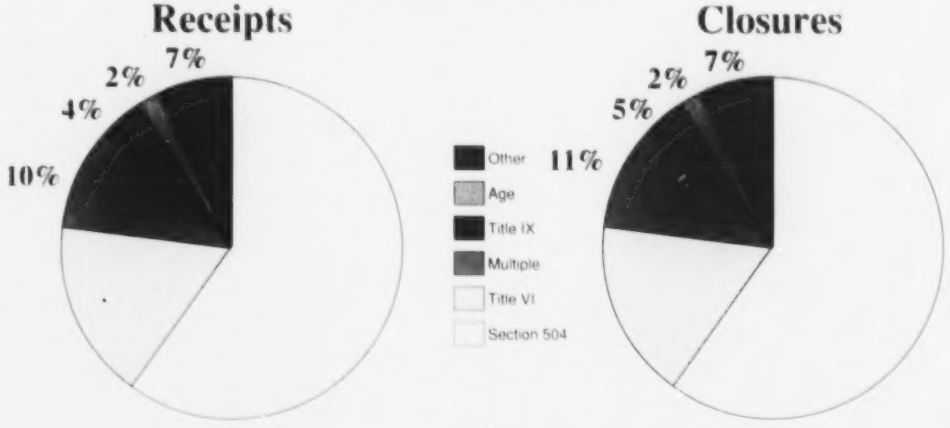
In order to expedite the voluntary resolution of some complaints, OCR offers a mediation process, Early Complaint Resolution (ECR), prior to the start of an investigation. In this context, OCR provides an opportunity for complainants and recipients to come together in an effort to resolve issues that have been raised. Successful ECR eliminates the need for an OCR investigation, freeing staff for other compliance and technical assistance activities. ECR is not offered in cases where a violation would affect more individuals than the complainant, or where the issues are complex. If ECR is refused, a full investigation is conducted.

During FY 1990, OCR received 3,382 regular complaints and closed 3,178, some of which had been filed in previous years. The number of regular complaints received represented a 19 percent increase over FY 1989 and exceeded any previous level in the agency's history.

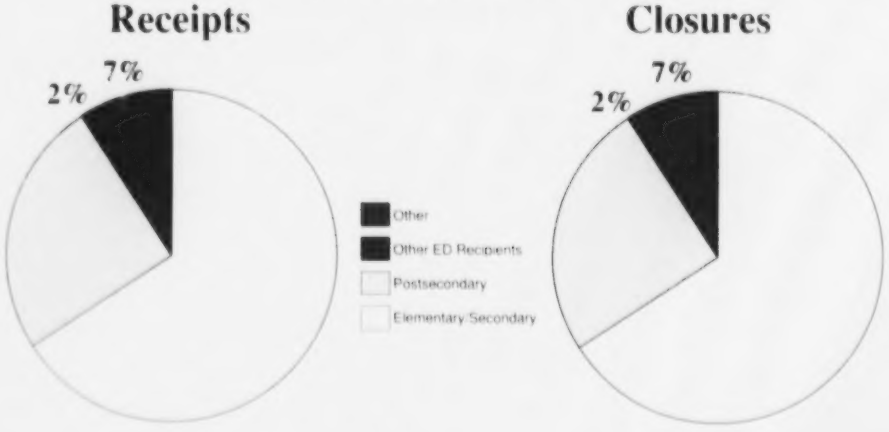
The charts below show the percentage of complaints received

COMPLAINTS RECEIVED AND CLOSED, BY JURISDICTION & TYPE OF INSTITUTION

JURISDICTION



INSTITUTION



Of the complaints received, 79 percent alleged discrimination in the delivery of services, while most of the remainder alleged discrimination in employment. ECR was offered in 491 complaints, which represents 15 percent of all FY 1990 complaint receipts. ECR was accepted in 270 complaints and successful in 172.

In FY 1990, 58 percent of OCR's complaint closures required full investigations. Nearly two-thirds of these cases required corrective actions on the part of the recipients involved. Forty-two percent of OCR's complaint closures were administrative closures, including 16 percent that were closed because OCR determined that it had no jurisdiction over the recipient or the issues of the complaint. Although these complaints did not require full investigation, considerable staff resources were required to gather the facts necessary to close the complaints.

Under internal time frames, OCR attempts to investigate and resolve complaints within 225 days after a complaint is received. This was accomplished in over 90 percent of the cases processed in FY 1990.

Compliance Reviews

OCR also conducts compliance reviews of programs or activities receiving Federal financial assistance from ED to determine whether recipients are complying with the civil rights laws that OCR enforces. Compliance reviews differ from complaint investigations in that they are initiated by OCR, usually cover broader discrimination issues, and affect significantly larger numbers of individuals. However, once OCR begins a compliance review, it follows essentially the same procedures as those for complaint investigations.

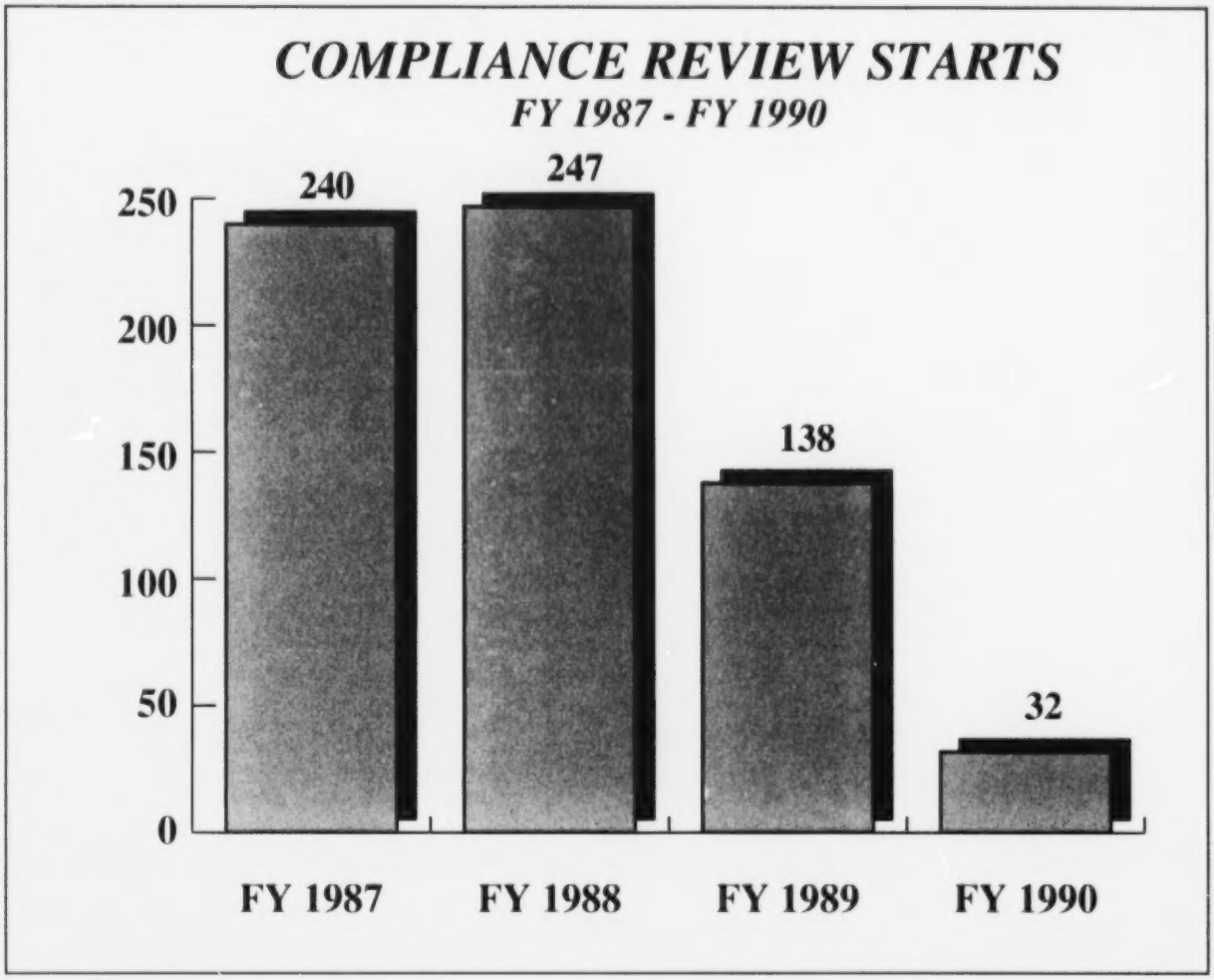
OCR chooses the recipients to review, the issues to examine, and the dates to begin compliance reviews. Selection of review sites is based on various sources of information that indicate potential compliance problems, including survey data and information provided by complainants, interest groups, the media, and the general public. These reviews permit OCR to target resources on compliance problems that appear to be serious or national in scope and that may not have been raised by complaints.

During FY 1990, OCR initiated 32 compliance reviews and closed 30, some of which had been started in previous years. The majority of the compliance reviews involved elementary and secondary schools and issues related to the assignment of students to schools or the assignment of students with physical or mental impairments. OCR's FY 1990 compliance review initiation and closure rates were considerably lower than in FY 1989 because of increased complaint processing activity and budgetary constraints that restricted travel. (See the chart on the following page.)

As a result of the new National Enforcement Strategy, most compliance review issues in the future will be selected from the designated high priority educational equity issues. Within the context of these issues, OCR's limited resources will be focused on those compliance review investigations that will likely have the broadest impact within a state, region, or the nation as a whole.

Monitoring

OCR closes many of its complaints and compliance reviews, where civil rights violations have been identified, on the basis of a written commitment by the recipient institution to complete remedial action. Recipients whose cases are closed based on remedial action plans are required to submit progress reports to verify that the agreed-upon actions have been taken. OCR's substantive reviews of such reports are referred to as "desk audits." During FY 1990, OCR closed 533 complaints and 18 compliance reviews that required monitoring of remedial



plans, and conducted 872 complaint-related and 270 compliance review-related desk audits of remedial plans. OCR also conducted 12 on-site monitoring reviews and 5 associated desk audits.

Under its National Enforcement Strategy, OCR has given new emphasis to monitoring remedial action agreements, including on-site visits where appropriate, to ensure agreements are being fully implemented; internal procedures have been established that will ensure thorough and timely monitoring activities. Monitoring activities now have the same priority as complaint investigations.

OCR also monitors the implementation of higher education desegregation plans in states that had previously operated dual systems of higher education. OCR's continuing involvement in this area is intended to ensure that commitments contained in the plans are being met. During FY 1990, OCR monitored desegregation activities in seven states, as noted below.

Florida has completed all requirements except for construction projects at its traditionally black institution (TBI). In January 1990, OCR sent a letter to Florida confirming the end of May 1992, as the completion date for two remaining construction projects. Florida submit-

ted one progress report in December 1990 and is to submit another in December 1991.

Delaware was notified, in October 1989, that based on an assurance that it would complete restoration of one historically significant building at its TBI, the State is in compliance with Title VI. In **Virginia**, OCR conducted a follow-up on-site visit to Virginia State University in November 1989. Based on information obtained during the on-site and additional documentation submitted by the Commonwealth, OCR notified the Governor, in April 1990, that further activities must be completed to enhance the two TBIs in Virginia.

The **Texas** and **Pennsylvania** plans expired in 1988. As of the close of the 1990 fiscal year, OCR staff in headquarters was analyzing the draft reports prepared by OCR's Dallas and Philadelphia regional offices regarding these states' implementation of their desegregation plans.

The **Kentucky** desegregation plan expired in 1987. In December 1988, OCR issued a proposed factual report for public comment and requested that Kentucky provide updated information. After completing its analysis of Kentucky's responses and the comments provided by the public, OCR will issue a final report and evaluation letter.

The **Maryland** plan expired in June 1990. OCR's Philadelphia regional office will carry out on-site reviews and analysis of data provided by the state.

Under the 1979 "Guidelines for Eliminating Discrimination and Denial of Services on the Basis of Race, Color, National Origin, Sex, and Handicap in Vocational Education Programs," 34 C.F.R. Part 100, Appendix B ("Guidelines"), all states operating or administering vocational education programs are required to develop Methods of Administration (MOA) plans describing how their own programs and those of their subrecipients will comply with Federal civil rights laws and regulations enforced by OCR. Through its regional offices, OCR has the responsibility for ensuring that each state is meeting its MOA commitments.

During FY 1990, OCR evaluated 63 state Vocational Education MOA programs for compliance with the 1979 Guidelines. (There are more than 50 state agencies reporting because 10 states have divided responsibilities between 2 agencies. In addition, reports are submitted by the District of Columbia, Puerto Rico, and the Virgin Islands.) OCR found that 50 state programs were substantially complying with their MOA commitments. The remaining 13 state programs had major deficiencies in their MOAs and were advised of the corrective action necessary to resolve identified deficiencies and the actions OCR intends to take to ensure that recipients comply with their MOA responsibilities. Eleven states submitted corrective action plans, a compliance review was conducted regarding one state program, and a

violation LOF was issued in the remaining state. Throughout the year, OCR provided technical assistance to states in fulfilling their MOA compliance responsibilities.

During FY 1990, OCR initiated a cooperative effort with DOJ to monitor selected school districts operating under Federal court order to which the United States is a party. OCR will determine whether the districts are in compliance with court orders and Title VI requirements. OCR conducted one such on-site visit in FY 1990.

Other Compliance Activities

OCR reviews, and makes recommendations to the Office of Elementary and Secondary Education on, the desegregation components of grant applications submitted by school districts under the Magnet Schools Assistance Program (MSAP). The Program provides grants to assist eligible school districts in order to eliminate, reduce, or prevent minority group isolation in elementary and secondary schools and to provide for courses of instruction within magnet schools that will substantially strengthen the knowledge of academic subjects and the grasp of tangible and marketable vocational skills of students attending such schools. OCR also determines whether certain eligibility requirements pertaining to civil rights compliance will be satisfied. During FY 1990, OCR reviewed applications from 54 recipient school districts. All of these applications were determined to be eligible for funds under MSAP.

OCR also reviews requests for reconsideration of OCR's compliance determinations from persons who filed complaints with OCR and who disagree with one or more of OCR's findings, by applying a standard of review that is based on the Administrative Procedure Act's standards of judicial review for administrative actions (5 U.S.C. 706 (2)(A)).

Quality Review Program

During FY 1990, OCR revised its internal procedures for assessing the quality of its case processing activities. The new quality review program includes the substantive review of cases by OCR supervisors, attorneys, and managers at critical points during case processing, and the procedural review of cases upon closure. In addition, on an annual basis, a quality review team appointed by OCR's Assistant Secretary conducts substantive post-closure reviews of select cases to determine the overall quality of OCR's case investigations, to identify areas where additional guidance or training is needed, and to recommend procedures for enhancing overall quality and for modifying the quality review program.

Administrative Enforcement

If OCR determines through a complaint investigation or a compliance review that a recipient has failed to comply with the civil rights statutes, OCR is required to seek voluntary compliance. When efforts to achieve voluntary compliance are unsuccessful, OCR is authorized to institute administrative enforcement proceedings before an administrative law judge (ALJ) or refer the case to DOJ for the initiation of court action. The primary enforcement mechanism has been the administrative enforcement proceeding leading to fund termination. In most cases, recipients voluntarily take steps to comply with the law before a final order of termination is issued.

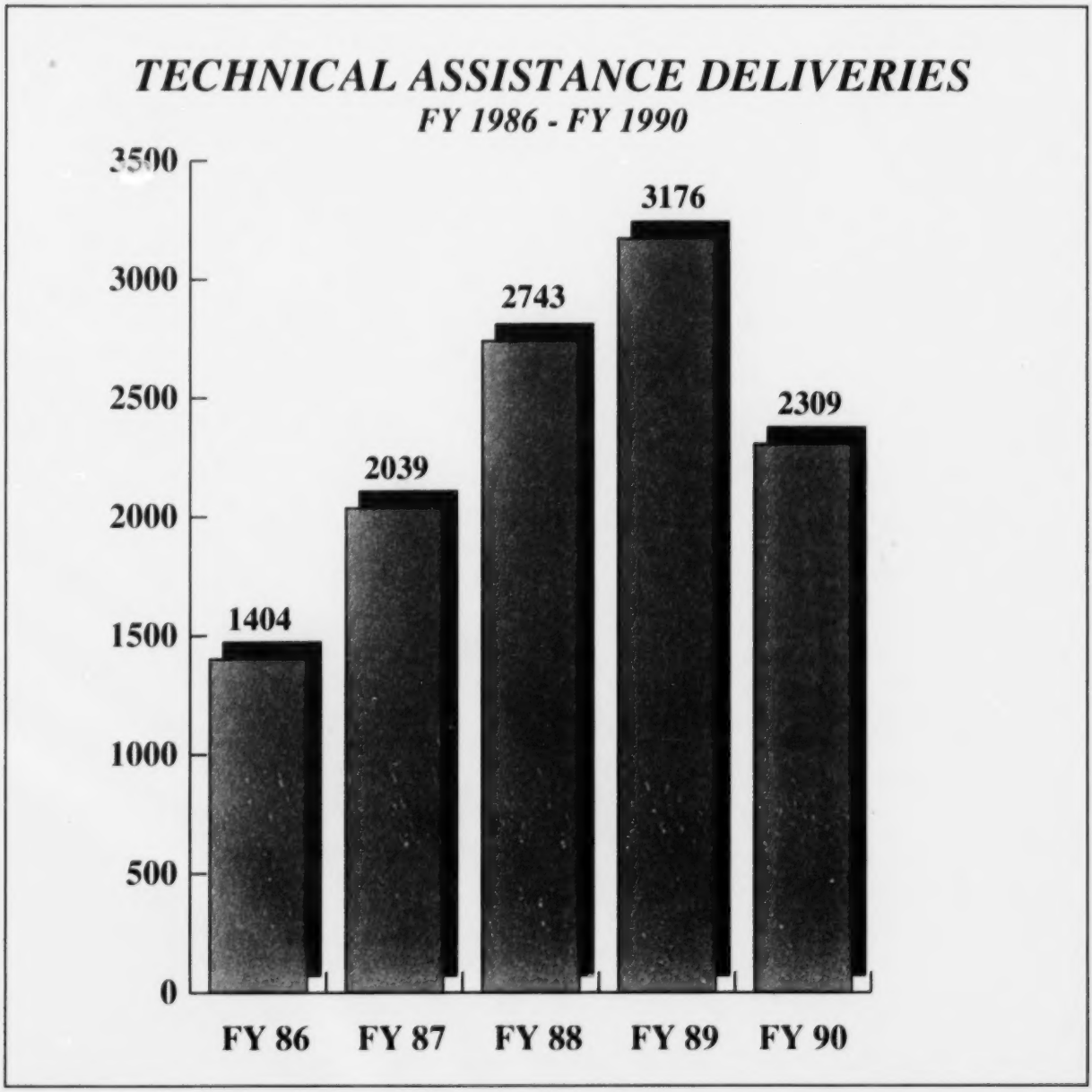
During FY 1990, approximately 14 cases were in active litigation; 12 of these cases were in the initial stages of litigation prior to the beginning of FY 1990, and 2 new administrative enforcement cases were filed. Acceptable settlements were obtained in 6 cases, including 3 that were carried over into FY 1991 pending full implementation of settlement plans and final dismissal by an ALJ.

One case resulted in fund termination against a school district for denying OCR access to information. This was the first fund termination in more than eight years. This case is discussed in Chapter II.

At fiscal year's end, 2 cases were on appeal to the Civil Rights Reviewing Authority and 8 cases were at the trial level, including the 3 cases discussed above. No cases were referred to DOJ for enforcement during FY 1990.

Technical Assistance

Although technical assistance is often provided during complaint investigations and compliance reviews, it also is provided outside



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the context of compliance activities. In this regard, OCR staff responds to issue-specific requests from ED recipients and beneficiaries through on-site consultations, training, workshops, and meetings, as well as written and telephone consultations. In addition to responding to requests for technical assistance, OCR initiates outreach activities with state and local education agencies, postsecondary education institutions, and beneficiaries. Outreach efforts are designed to offer substantive policy and compliance information that addresses recurring compliance problems and emerging issues and to increase cooperative relationships with education agency officials and beneficiary organizations.

Due to resource constraints and the increasing complaint work load, the number of technical assistance deliveries decreased during FY 1990 compared to the two previous years. (See the chart on the previous page.) During FY 1990, OCR received 1,788 technical assistance requests, initiated 264 outreach efforts, and conducted 2,309 technical assistance deliveries. Budgetary constraints forced OCR to deliver most technical assistance through in-house telephone or written consultations. However, technical assistance was also provided through activities such as conference participation, training, workshops, and meetings.

Representatives from approximately 6,441 groups (e.g., state and local education agencies, postsecondary education institutions, and beneficiary organizations) and 2,200 individual beneficiaries participated in the technical assistance activities conducted during FY 1990.

The majority of technical assistance requests were related to Section 504 (handicapped) concerns and most outreach efforts addressed multiple jurisdictional issues and handicapped concerns.

As part of its ongoing technical assistance program, OCR develops and disseminates publications addressing specific civil rights issues or related problems. During FY 1990, OCR was unable to issue any new publications because of budgetary constraints. From its diminished inventory, OCR disseminated about 3,275 publications in response to requests from interested individuals and groups, as well as to ED recipients and beneficiaries during the fiscal year.

However, efforts continued to develop new publications to support and enhance technical assistance efforts. Five pamphlets were completed.

- **Historically Black Colleges and Universities (HBCUs) and Higher Education Desegregation** - This pamphlet informs beneficiaries and the public of the significant contribution to higher education made by these institutions. The viability of HBCUs as an educational choice available to all students is also discussed.

- **Auxiliary Aids and Services for Postsecondary Students with Handicaps** - This pamphlet outlines the Section 504 requirements for postsecondary institutions to provide auxiliary and personal aids and services for disabled postsecondary students.

- **How to File a Discrimination Complaint with the Office for Civil Rights** - This fact sheet provides education beneficiaries with the basic knowledge needed to file a discrimination complaint with OCR.

- **Notice of Nondiscrimination** - This fact sheet discusses the requirements for publication of notices of nondiscrimination under Title VI, Title IX, and Section 504. It also describes the methods of notification and the ability of recipients to combine notice requirements for the three regulations.

- **What Schools Can Do To Improve Math and Science Achievement by Minority and Female Students** - This pamphlet identifies actions that elementary and secondary school teachers can take to ensure that female and minority students are given an equal opportunity to succeed in math and science, to attract them to math and science classes and careers, and to raise their achievement levels in math and science.

OCR will continue to develop such publications and to respond to requests for technical assistance from beneficiaries and recipients. However, the major thrust of OCR's future technical assistance efforts will be to address, through outreach activities, civil rights issues of national significance which have been identified as priority concerns in the National Enforcement Strategy. This will be accomplished by providing substantive presentations on OCR's policy and legal standards in selected conferences and workshops of national education and civil rights organizations and initiating meetings with various interested groups at the regional and headquarters level. These contacts will allow OCR opportunities to address the high priority issues and, in turn, organizations can share information with their memberships.

CHAPTER II - ELEMENTARY AND SECONDARY SCHOOLS - CIVIL RIGHTS PROGRAM

There are approximately 16,000 school districts in the nation. Virtually all receive some form of Federal financial assistance and, therefore, are covered by the civil rights laws enforced by OCR. During FY 1990, 66 percent of OCR's complaints and 56 percent of its compliance review starts involved elementary and secondary schools. Many of the issues that OCR considered in these investigations concerned fundamental rights of access to equal educational opportunities. The denial of such opportunities to a school child may bar any later possibility for that student to develop fully his or her talents. In effect, an artificial barrier may be raised early in a student's life, with a successive narrowing of educational choices and lowering of educational expectations and career aspirations. The examples cited below are drawn from hundreds of cases investigated in FY 1990 in which OCR secured voluntary corrective action from recipients in order to resolve violations of the civil rights laws. As the examples below indicate, OCR's compliance activities were directed at affording all students the opportunity to realize their educational potential from the moment they enter the classroom.

HANDICAP DISCRIMINATION

Complaints alleging discrimination based on handicap accounted for 68 percent of complaints filed against elementary and secondary school systems in FY 1990. These complaints consumed more of OCR's resources than any other compliance activity. The complaints raised compliance issues regarding access, referral, evaluation, and placement of students with handicaps, as well as treatment and services made available to them.

Program Accessibility

Section 504 requires school systems to make their programs accessible to handicapped persons. Structural changes are necessary when program accessibility cannot be achieved by other means. OCR continues to receive complaints in this area.

In one complaint, against the Beecher Community School District (Michigan), a 14-year-old high school freshman with osteogenesis imperfecta (brittle bone disease) and who uses a wheelchair was unable to attend his neighborhood high school because it was not accessible to persons in wheelchairs. As a result, the student, who was an honors student at his middle school, was assigned to a high school in a neighboring school district. The complaint alleged that the home school district discriminated against the student, in violation of Section 504, by failing to provide him with an education in his home district.

OCR investigated the complaint and found that the courses and other activities that were held in all five buildings on the home district's only high school campus were inaccessible to persons in wheelchairs. This included business, history, and government classes that were held on the second floor of the main classroom building, and English, literature, and foreign language classes that were held in the building which houses the library and auditorium. In addition, the industrial arts building and the field house had no accessible entrances. Equipment, such as the band saw, drill press, and sewing machines, was too high for mobility-impaired students. The swimming pool and locker rooms in the field house, the football stadium and athletic field, and the water fountains were inaccessible to mobility-impaired persons.

As a result of OCR's findings, the school district agreed to make all courses and library services accessible to mobility-impaired students and will ensure that there is at least one accessible entrance to each of the buildings on the high school campus. The district also agreed to make the auditorium stage, athletic field, stadium, and swimming pool accessible and to modify the restrooms, locker rooms, industrial arts equipment, and the water fountains to ensure that they are usable by mobility-impaired students. The mobility-impaired student, who was the subject of the complaint, now attends school in his home district.

Facilities

Facilities provided for handicapped students must be comparable to those provided for nonhandicapped students. A complaint was filed alleging that the Dougherty County School District (Georgia) violated Section 504 regarding classroom facilities at several of its schools. In considering this complaint, OCR also reviewed the State Department of Education and local guidelines governing school design, construction, and facilities standards since the district is governed by them. These guidelines also require that students be provided a suitable sized classroom in a distraction-free area, as required by the type of program or service provided.

OCR determined that there were violations of Section 504 (and the state guidelines) at five of the district's schools. At two schools, the speech therapy class was located in a book storage room with no heating or air conditioning. At one of the schools, the instructor was sometimes compelled to use a flashlight because of the poor lighting. A city safety inspection disclosed fire code problems regarding ventilation and rescue requirements.

At a third school, a speech class met in a small area of the secretary's work station where office equipment was used. The class was relocated to an audiovisual storage room, which contained exposed heating and air conditioning ducts and electrical boxes. The district operated several classrooms for the mildly mentally handicapped (MIMH) that also did not meet State facility standards and that resulted in student distractions.

At the high school, MIMH students met in one-half of a small portable classroom with inadequate dividers and no sound barriers. In contrast, classes for nonhandicapped students were divided by architectural partitions that were padded for sound. Another MIMH office-sized classroom was located two doors away from a band room and shared a wall with the gymnasium. Even with the door closed, noises from these areas impeded instruction. A health class attended by nonhandicapped students across the hall was insulated from these noises.

Following OCR's investigation, Dougherty County agreed to correct the problems. The corrective action included relocation of classes, renovation of facilities, and installation of lighting fixtures and soundproofing devices. The actions will allow comparable facilities for 112 handicapped students attending school in the county.

Transportation Services

Handicapped students must receive equal opportunity to participate in transportation services. OCR investigated several complaints regarding transportation services for handicapped students. At issue in some of the cases was whether the furnished transportation resulted in a reduced school day for handicapped students because of the length of bus rides.

In one complaint, Duchesne County School District (Utah) operated two special education facilities that served 89 students. At one of the schools, which serves students with behavior disorders, the school day was 5.45 hours. At the second school, which serves students with severe multiple handicaps, the school day was 5.00 hours. This compared to an average of 6.32 hours for the district's regular education schools. OCR determined that certain handicapped students attending the special schools were subjected to stop-over delays in order to transfer buses. Regular education students were not subjected to stop-over delays. Moreover, certain handicapped students encountered three bus transfers, while regular education students were not required to transfer more than two times en route to their schools. These factors contributed to the shortened school day for handicapped students. Following a discussion of the findings, Duchesne agreed to make adjustments to bus routes that will provide handicapped students a minimum 6.30 hour school day.

In a second complaint, transportation provided by the Williamsport Area School District (Pennsylvania) required large numbers of handicapped students to spend substantially more time in travel status than nonhandicapped students. For example, 93 percent of students on regular bus routes travelled less than 30 minutes one way compared to 68 percent of students on the special bus routes. In contrast, 7.4 percent of students on special bus routes travelled more than one hour compared to .5 percent of students on regular bus routes. Also, OCR found a substantial number of handicapped students missed parts of the school day because of late arrival and early departure times. The investigation identified 70 handicapped students who arrived at schools up to 58 minutes after the start of classes; 93 handicapped students departed up to one hour and 40 minutes prior to the end of the school day. The complainant's daughter, who suffers from spina bifida, was required to ride the bus one hour and 20 minutes one way, although her residence was within 20 minutes travel time from her elementary school. After objections by her parents to the length of travel time, the student's bus schedule was changed, but it required her arrival at school one hour before the start of the school day.

As a result of OCR's investigation, Williamsport agreed to correct these violations. Bus routes were rescheduled so that handicapped students spend approximately the same amount of time on buses as nonhandicapped students. Also, transportation schedules were designed to ensure arrival and departure times do not reduce the length of the school day for handicapped students.

Evaluation and Placement

A school system must establish standards and procedures for the evaluation and placement of children who need or are believed to need special education or related services. These standards and procedures must ensure that tests and other assessment materials are validated and administered by trained personnel in conformance with their instructions.

OCR investigated a complaint that the Osceola County School District (Florida) failed to identify and assess the needs of limited-English-proficient students enrolled in exceptional student education services (ESE), a program for learning disabled students. There were 133 limited-English-proficient students enrolled in Osceola's ESE program. OCR determined that some of the district's evaluation procedures resulted in invalid student assessments. For example, in assessing a student for a specific learning disability, the district compared the student's intelligence quotient (IQ) with achievement levels. However, Osceola had been testing limited-English-proficient students' IQ in Spanish while assessing achievement in English. This resulted in invalid comparisons, since the same language must be used throughout the assessment process. Accordingly, OCR concluded that the district was in violation of the law because tests and other evaluation methods were invalidated by improper administration.

Osceola agreed to review, with the assistance of the State, its procedures for assessing limited-English-proficient students for ESE services. As a result, the district issued a clarification of its assessment policy that now meets nondiscriminatory standards.

Extracurricular Activities

The Mississippi High School Activities Association (MHSAA), a nonprofit corporation of the State of Mississippi, prescribes the academic rules for students participating in extracurricular activities. Under the Section 504 regulation, a state (or any other recipient of Federal funds) may not provide assistance to an organization that discriminates against students with handicapping conditions. A complaint was filed against the Mississippi Department of Education for allowing local school districts to operate under MHSAA rules, which allegedly discriminated against handicapped students.

The rules issued by MHSAA are intended to ensure that students who participate in extracurricular activities are making progress toward earning a high school diploma. These rules specify that students must obtain a minimum of 4 1/2 credits yearly to participate in athletics. There are learning disabled students who cannot take a sufficient number of courses to meet this credit requirement. Nevertheless, these students may be successful in completing their approved individual education plans. Accordingly, OCR found that the Mississippi Department of Education violated Section 504 in allowing local districts to participate in the MHSAA since its rules discriminated against handicapped students.

The Mississippi Education Department agreed to meet with the MHSAA to ensure that its rules do not discriminate against children with handicaps. MHSAA has now clarified its eligibility rules to ensure that handicapped students will not face any discrimination as a

result of the rules. The resolution of this matter potentially affects 23,000 handicapped students attending schools in Mississippi.

Section 504 and the Individuals with Disabilities Education Act (IDEA)

During FY 1990, a number of school systems requested clarification of the requirements concerning elementary and secondary education under Section 504 and the IDEA. The IDEA is a grant statute and attaches specific conditions to the receipt of Federal funds. The regulations implementing Section 504 and the IDEA have significant similarities and differences. For example, three sections of the Section 504 regulation state that one means for recipients to comply with Section 504 with respect to those sections is to comply with the IDEA. OCR, therefore, sometimes must review recipients' activities in light of the IDEA.

OCR participated in several workshops to provide guidance on the distinctions between Section 504 and the IDEA. A compliance workshop was conducted for special education directors and administrators in Louisiana. The presentation could have a potential impact on 115,000 students already enrolled in special education classes and other students who may be excluded from services because they do not meet the definition of handicapped person under IDEA but do meet the definition under Section 504. A similar workshop was conducted for the Education Department's General Administrative Regulations Complaint Compliance Unit at the Illinois State Board of Education.

At Loyola University (Chicago), OCR presented a workshop in connection with a graduate course required for Illinois teacher licensure. As teachers or counselors, the majority of students in the class have or will have a direct role in the provision of special education services to handicapped students.

RACE AND NATIONAL ORIGIN DISCRIMINATION

Complaints alleging discrimination based on race and national origin accounted for 15 percent of complaints filed against elementary and secondary school systems. Complaint investigations covered such issues as segregated schools, student and faculty assignment practices, within school discrimination, school discipline, and services to limited-English-proficient students.

Interdistrict Transfers

Many court orders prohibit interdistrict student transfers if they diminish desegregation in the school districts involved. OCR received a complaint alleging that students who are residents of Yazoo County (Mississippi) were permitted to transfer to Yazoo City, a contiguous school district, to avoid attending predominantly minority schools. Yazoo County is desegregating under a Federal court order.

In the 1989-90 school year, Yazoo County received 98 requests for transfers to Yazoo City and granted 74. There was no evidence that actions taken on the transfer requests were based on race. However, OCR determined that the transfers resulted in decreasing the proportion of nonminority students at all five Yazoo County schools. This change in the racial composition of the schools also would be expected to affect student decisions to attend these schools in the future. Accordingly, OCR concluded that Yazoo County's approval of the interdistrict transfers impeded desegregation, and possibly violated its court order.

Subsequently, Yazoo County agreed to discontinue interdistrict transfers. The district also agreed to comply with all State requirements governing interdistrict transfers. The settlement has an impact on the district's entire 1,400 student enrollment.

Student Discipline

A mother of a high school student alleged that the Aurora Public Schools (Colorado) imposed a disciplinary sanction on her son because of race. Her son, who is black, was involved in a fight with a white student and received a five day school suspension. The white student was not suspended in this incident. The same white student was involved in a subsequent fight with another white student and neither student was referred by the classroom teacher for disciplinary action. Instead, they received verbal reprimands. This same instructor had referred the complainant's son to the school office for lesser infractions.

In investigating the complaint, OCR determined that the school district did not establish specific sanctions for individual disciplinary infractions. Broad discretion was provided to school officials in imposing disciplinary sanctions. OCR found that this situation may have contributed to the disproportionate number of black students who have been suspended for fighting infractions. For example, in the 1989-90 school year, blacks comprised 17 percent of the student enrollment, but accounted for 37 percent of all suspensions and 44 percent of suspensions for fighting. Aurora did not provide adequate justification for the differential sanctions and was determined to be in violation of Title VI. Following OCR's determination, the district submitted a corrective action plan

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and agreed to expunge the disciplinary records of the complainant's son. The district also agreed to develop new disciplinary policies to eliminate subjective interpretation in administering disciplinary sanctions including the referral of **all** students involved in possible fighting infractions to the school office for disciplinary action.

Racial Harassment

A complaint was filed against the Paducah Independent School District (Texas) for allowing a white parent to enter the local high school to confront an enrolled black student. The parent expressed intent to physically harm the student upon entering the building. Nonetheless, the parent was assisted by a faculty member, who located the student and provided a vacant classroom for the ensuing confrontation.

OCR determined that during the confrontation the student was subjected to racial harassment, including racially derogatory statements, threats, and intimidation from the parent. This occurred in the presence of the faculty member, who made no efforts to intervene. Paducah took action in this matter only after the complainant brought the incident to the attention of the Texas Education Agency and the Paducah School Board. The faculty member subsequently received a letter from the school superintendent advising that he was in violation of professional ethics and procedural requirements in the handling of this situation. The letter failed to address the racially discriminatory aspects of the incident. Additionally, the school district did not take any action to prevent a recurrence of the incident.

Following OCR's investigative findings, Paducah submitted a corrective action plan. It resulted in the issuance of a formal letter of reprimand to the faculty member, indicating that his participation contributed to the Title VI violation found by OCR. The district also made commitments to nondiscriminatory enforcement of its policies and procedures, including treatment of visitors to school facilities. Procedures for resolving racial discrimination complaints, including incidents involving campus visitors, were issued to students at the beginning of the 1990-91 school year. In September 1990, the district conducted a series of race relations workshops for school board members, district staff, and students. The training was provided by experts from a Desegregation Assistance Center funded by ED.

OCR also assisted another school district in addressing incidents of racial harassment. OCR explained that racial harassment in an educational setting can be a violation of the Title VI regulation. The district was advised of several activities that could be made available to prevent and to respond to incidents of racial harassment including: 1) developing a clear policy statement on racial harassment consistent with First Amendment principles and establishing a grievance procedure; 2) establishing sanctions for harassers; 3) identifying the extent of the problem through surveys, hearings, meetings, or other means; 4) developing an employee and student code of conduct; 5) providing programs in race relations for students and employees; 6) developing pamphlets advising students and employees about the nature of racial harassment, its legal and social implications, and institutional penalties; and 7) training school district personnel to deal with incidents of racial harassment. OCR offered to provide additional technical assistance in implementing these activities.

Employment Practices

School systems may not subject their employees or applicants for employment to discrimination through their employment policies or practices in such areas as recruitment, hiring, promotions, terminations, or rates of pay or other forms of compensation. At the request of a school system, OCR provided technical assistance to a school superintendent and several

other administrators concerning methods to ensure equal employment opportunity in the district's recruitment and hiring processes. The district operates 7 schools with an enrollment of 4,000 students (40 percent black) and employs 36 administrators (4, or 11 percent, of whom are black) and 259 teachers (37, or 14 percent, of whom are black). Through meetings, OCR assisted the administrators in developing policies and procedures to ensure that all persons receive equal employment opportunity. For example, OCR assisted the district in developing a policy statement covering all areas of employment, including recruitment, hiring, assignment, compensation, promotion, and termination. OCR also helped to develop personnel policies and practices that ensure that non-job-related criteria do not have an adverse impact on racial and ethnic minorities, women, or handicapped persons. The superintendent indicated that OCR's recommendations would be incorporated in the district's equal opportunity program.

Language Minority Services

Under Title VI, school systems are responsible for ensuring that equal educational opportunities are provided to national origin minority children, including those who are not proficient in English language skills. As part of its efforts to address this issue, OCR conducted a compliance review of the education program and services provided to limited-English-proficient students by Chinle Unified School District (Arizona). Seventy-one percent of the district's students have a primary or home language other than English. (All but one of these students are American Indians.) OCR's review found that the school district had failed to fully assess the English language proficiency of the students. As a result, the district did not know how many students were limited-English-proficient and in need of special language assistance. OCR also found that the district was not adequately implementing its educational programs for limited-English-proficient students.

As a result of OCR's findings, the school district agreed to correct deficiencies in its program, including implementing uniform procedures for identifying and serving the educational needs of language minority students. The district's remedial plan includes specific criteria for determining when identified limited-English-proficient students no longer require special language assistance. The plan establishes qualifications for staff teaching limited-English-proficient students at the primary, elementary, and secondary levels.

SEX DISCRIMINATION

Complaints alleging discrimination based on sex accounted for 3 percent of complaints filed against elementary and secondary school systems. Several of the issues in these complaints focused on equal athletic opportunity. This also

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was an area where technical assistance was provided in response to requests from school systems.

Interscholastic Athletics

OCR received a complaint that the Chicago Public Schools (Illinois) did not provide female students equal opportunity to participate in interscholastic athletics. While accounting for one-half of the enrollment at Chicago's secondary schools, females comprised only 26 percent of participants in interscholastic athletics. The female interscholastic program consisted of 8 sports, compared with 13 sports for male students. Also, the school district provided secondary levels of competition (freshman/sophomore) for male football, basketball, and baseball teams, but none for sports open to female students.

Shortly after the complaint was filed, Chicago conducted a survey of student interest in interscholastic athletics to comply with the Sex Equity Rules issued by the Illinois State Board of Education. This survey supported the addition of cross country and secondary levels of competition in basketball, volleyball, and softball for female students. For example, almost the same number of female students (4,389) expressed interest in cross country as male students (4,587). Also, OCR's investigagation showed that the district's coaches agreed that secondary levels of competition were necessary for females to develop skills and receive the playing time needed to sustain interest in a sport. Under the prevailing situation, female students could only try out for varsity teams. As a result of its investigation, OCR concluded that Chicago was not meeting the expressed interests and abilities of its female students, as required by Title IX.

In response to these findings, Chicago is now implementing a plan to provide equal athletic opportunity. Female cross country teams were established in 32 of Chicago's 64 secondary schools. Also, secondary level female basketball teams are now being offered in 48 schools; 45 schools are now offering secondary level female volleyball and softball teams. As a result of Chicago's actions, thousands more females are participating in sports.

As noted above, under Title IX the athletic interests and abilities of male and female students must be equally effectively accommodated. During FY 1990, OCR conducted meetings and provided assistance on this issue to state education equity staff responsible for monitoring school districts' compliance with Title IX. For example, OCR participated in a meeting with representatives from five state education agencies to clarify the Title IX requirements for interscholastic athletics, including how OCR determines whether the selection of sports and levels of competition effectively accommodate the interests and abilities of students. Using a case model, OCR explained the investigative steps undertaken and the elements of the athletic program examined by OCR to determine a school district's compliance with Title IX. The meeting was sponsored by the New England Center for Equity Assistance.

OCR also assisted the sex equity coordinator from the Utah Department of Education in developing a monitoring letter which was to be sent to school districts throughout the State reminding them of their obligations under Title IX to ensure equal athletic opportunity.

Teenage Pregnancy

Under Title IX, school systems are not to discriminate against any student on the basis of such student's pregnancy, childbirth, or the conditions associated with pregnancy. OCR participated in the "Kids Having Kids" conference sponsored by the University of Illinois Cooperative Extension Service (Chicago). The conference was attended by home economists, teachers, community workers, and representatives of organizations dedicated to prevent-

ing teenage pregnancy. OCR was represented on a panel entitled "Your Rights As a Teenage Parent." The OCR presenter discussed Title IX and its application to pregnant and parenting teens, cited recent assistance the Office had provided to an area school district on this topic, and highlighted a brochure which was developed jointly by the Illinois Caucus on Teenage Pregnancy and the Illinois State Board of Education with assistance from OCR. The brochure informs pregnant and parenting students about their rights to complete their education.

POLICY GUIDANCE

During FY 1990, OCR issued policy, guidelines, and legal standards on several elementary and secondary education issues, including:

- application of Section 504 to noneducation programs, such as day care and after-school latch key programs conducted by recipients;
- application of Section 504 to children with AIDS in elementary and secondary schools;
- status as "qualified handicapped persons" of hearing-impaired parents of nonhandicapped students attending public schools;
- school suspension of handicapped students;
- treatment of pregnant students; and
- schools' responsibilities to homeless, handicapped children and children born to mothers who have been exposed to drugs.

In addition, OCR and ED's Office of Special Education and Rehabilitative Services responded to requests for guidance on the obligation of school districts to provide appropriate education services to handicapped children under several school "Choice" programs.

ENFORCEMENT ACTIVITIES

During FY 1990, OCR filed one new administrative enforcement action against a public school system. On May 7, 1990, a Notice of Opportunity for Hearing was issued to the Rhea County School District (Tennessee) for failing to assure that education programs are readily accessible to mobility-impaired persons. The Notice also cited the school district for maintaining an emergency evacuation plan and safety program that make no provision for assisting persons who may be mobility, hearing, or visually impaired.

In another case, OCR obtained a settlement agreement with the Chatham County School District (Georgia). This case was initiated in 1986 because the district had denied OCR access to investigate two complaints alleging denial of a free appropriate public education to handicapped children. Following the settlement agreement, the administrative proceeding was stayed pending completion of the investigation. The school district granted OCR access and OCR proceeded with its investigation. The case was dismissed by the ALJ on March 13, 1990.

In OCR's first termination of Federal financial assistance in recent years, a final departmental order resulted in the cut-off of Federal financial assistance to the DeKalb County School District (Georgia). The case began in 1984 when OCR received multiple complaints of alleged discrimination against handicapped students in the DeKalb district. OCR sought to investigate eight of the complaints, but was denied access by the school district to necessary information. In a similar 1988 case, the Georgia Department of Education denied access to OCR investigators seeking information about one discrimination complaint. Both cases resulted in termination orders. However, the termination order against the Georgia Department of Education was resolved, on August 31, 1990, when it agreed to cooperate with OCR in the investigation of the 1988 complaint. The Georgia Department of Education also agreed to

cooperate in any future investigations of complaints received by OCR. The termination of funds to DeKalb County became effective on September 14, 1990. During FY 1990, the district received more than $7 million from the Department.

On April 17, 1991, DeKalb County satisfied all terms and conditions of an agreement between DeKalb County and OCR to restore its eligibility to receive Federal financial assistance from the Department of Education. DeKalb County provided OCR with access to information necessary to investigate the pending complaints and agreed to cooperate in any future investigations of complaints received by OCR. DeKalb County's eligibility to receive Federal financial assistance was reinstated as of April 17, 1991, and Federal funds withheld since September 14, 1990, were released for future obligation.

NATIONAL ENFORCEMENT STRATEGY IMPACT

Under the National Enforcement Strategy, OCR will be giving special attention during FY 1991 to five elementary and secondary education equity issues:

- Equal Educational Opportunities for National Origin Minority and Native American Students Who are Limited-English-Proficient.
- Ability Grouping that Results in Segregation on the Basis of Race or National Origin.
- Equal Educational Opportunities for Pregnant Students.
- Identification for Special Education and Related Services for Drug-Exposed and Homeless Children with Handicaps.
- Discrimination in Athletic Programs Based on Sex.

CHAPTER III - COLLEGES AND UNIVERSITIES - CIVIL RIGHTS PROGRAM

There are approximately 3,600 colleges and universities in the nation that receive Federal financial assistance and are, therefore, subject to the civil rights laws. During FY 1990, 25 percent of OCR's complaints and 44 percent of its compliance review initiations involved postsecondary schools. The issues in these investigations concerned the obligation of recipient institutions to operate nondiscriminatory programs with respect to the recruitment, admission, treatment, benefits, and services extended to students. Aside from legal requirements, there is a compelling national interest in ensuring equal educational opportunities for all students on our campuses. If present trends continue, minorities and women will constitute 68 percent of new entrants to the work force by the year 2000. It is important to the nation's economic competitiveness and productivity that this portion of our future work force pursue advanced education in order to be prepared to function in an increasingly high technological society. The examples below illustrate OCR's compliance activities in postsecondary education.

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HANDICAP DISCRIMINATION

Complaints alleging discrimination based on handicap accounted for 40 percent of complaints filed against postsecondary schools in FY 1990. Complaints concerned special services for students with impaired sensory, manual, or speaking skills; reasonable modifications in academic requirements, where necessary; nondiscriminatory methods for measuring academic achievement; comparable and accessible housing, including off-campus housing; and equal opportunity to participate in nonacademic and extracurricular services and activities.

Auxiliary Aids

Section 504 requires that auxiliary aids be provided to handicapped students to ensure that they are not excluded from participation. Such aids may include interpreters or other effective methods of making orally delivered materials available to students with hearing impairments.

A hearing-impaired medical student at Northwestern University (Illinois) requested sign language interpreter services in order to participate in the academic and clinical portions of her program during her junior year. The student was able to complete the first year of the medical program without interpreter services since courses were in a lecture format, allowing her to use lipreading skills and a personal amplification device. During the second year, the medical school paid for interpreters for discussion sessions in classroom settings.

The medical school denied interpreter services for the student's junior year 12-week medicine course because of budgetary constraints. The services were needed for the student to participate in daily morning patient reports at the hospital and in weekly conferences. The medical school also denied interpreter services for lectures, conferences, and surgical settings in a surgery course. While Northwestern provided a portable FM amplification device for the student's use as an alternative to interpreter services, the device proved ineffective in an operating room during surgery and during morning reports and question-and-answer sessions at the hospital. Given the extent of the hearing impairment, OCR determined that interpreter services were the only effective method of making orally delivered information available to the student.

Accordingly, OCR concluded that Northwestern's failure to provide the medical student with necessary interpreter services violated the law. In addition, OCR determined that Northwestern discriminated against other hearing-impaired students by conditioning the provision of interpreters on funding and by not providing a system to respond promptly to student requests for interpreters.

The case was resolved by Northwestern agreeing to provide the medical student with interpreter services during her final year at the medical school. She subsequently received her medical degree. Northwestern also submitted written assurances that it will provide, at no cost, requested educational auxiliary aids, including sign language interpreters, that are necessary for the full participation of any student with a handicap. This new policy was communicated to the more than 13,000 students attending the university; 28 handicapped students were receiving services from the university at the start of the 1990-91 academic year.

RACE AND NATIONAL ORIGIN DISCRIMINATION

Complaints alleging discrimination based on race and national origin accounted for 24 percent of complaints filed against postsecondary schools. A number of the complaints involved student treatment.

Disciplinary Action

Title VI requires that discipline policies be applied in an even-handed manner to all students, regardless of race, color, or national origin. OCR received a complaint from the mother of a black student at the University of Pittsburgh (Pennsylvania) alleging that campus police discriminate on the basis of race with regard to student disciplinary actions.

OCR's investigators found that the university's campus police were given wide discretion. Campus police officers could elect to arrest persons on university property, give citations, refer complaints to the City Magistrate, or refer cases to the student judicial system or the Housing Director. They also might ignore an incident. OCR found evidence that the exercise of discretion by campus police varied according to race. When black male students violated a school disciplinary rule, they were more likely to be issued a citation and referred to the City Magistrate for prosecution. In several instances this resulted in criminal records for the students referred. Similar infractions by white students often were ignored or referred to the student judicial system for consideration by the Dean of Student Affairs and the Student Judicial Board. In fact, campus police sometimes ignored expressed wishes of victims, by bringing criminal charges against all black participants in an incident. In addition, there was evidence of derogatory racial remarks by campus police directed at black male students. During the 1988-89 academic year minority students committed 25 percent of infractions, but received 41 percent of criminal citations.

As a result of these findings, Pittsburgh developed new procedures for the campus security department. Under the new procedures, all arrests by campus police are subject to the review and approval of the Dean of Student Affairs. The university also is providing racial and cultural awareness training for campus police, resident housing assistants, and members of the Student Judicial Board.

Racial Harassment

Under Title VI, an educational institution may be held responsible for racial harassment if the harassment is sufficiently severe or pervasive to create a hostile environment and the institution fails to respond adequately.

A complaint was filed with OCR alleging that American Indians participating in a Pow Wow Days celebration at California State University, Chico, were subjected to physical and verbal harassment. Pow Wow Days was sponsored by the University's American Indian Club. The complaint also alleged that the University did not properly investigate and take appropriate action after an internal grievance was filed.

OCR's investigation confirmed that several American Indians were subjected to harassment on the basis of their race and that the harassment was purposeful and egregious in character. The harassment took the form of racial slurs, intimidating language, and mock war whoops directed at American Indian participants by University baseball players and other persons. Altogether, there were 12 separate racial incidents during Pow Wow Days. There also was a physical assault made on a teenage American Indian participant.

OCR also found that the university had no procedure for considering the internal grievance that was filed. The university had conducted a limited investigation, but had failed to interview the majority of people who had knowledge of the alleged incidents. Other than the two complainants, victims in the incidents were not interviewed. The university terminated its investigation based on its inability to identify the perpetrators of the incidents; however, the university did not dispute the occurrence of the incidents. OCR determined that the absence of procedures for addressing race discrimination complaints prevented the university from conducting a thorough and impartial inquiry.

Following discussions of the findings, the university agreed to undertake corrective measures that will affect its entire 13,236 student enrollment, including 1,189 minority students. A statement describing the results of OCR's investigation and reaffirming the university's policy against racial harassment was issued to faculty and staff and printed in the campus newspaper. The university also agreed to provide racial awareness training, materials for new faculty, staff and students, and a comprehensive in-service training program. In addition, the university agreed to work with OCR in formulating legally acceptable procedures for investigating racial harassment complaints.

In another complaint, OCR found that Defiance College (Ohio) failed to acknowledge and adequately address incidents of on-campus racial harassment, thereby condoning a hostile campus environment for black students in violation of Title VI. These incidents related to a fight following the college's homecoming football game.

OCR's investigation determined that the fight was initiated by white students, and that numerous racial slurs were made during and subsequent to the incident. However, the college did not discipline students for the racial hostility (verbal and physical) displayed but addressed the matter as disorderly conduct. Black students expressed to the college president their concerns that the campus atmosphere was racially intimidating and hostile. Also, they complained that the college's failure to acknowledge and address the incident contributed to their perceptions that Defiance College was not sensitive or responsive to the needs of black students.

OCR negotiated a settlement agreement with the college, in which the college agreed to take action upon notice of incidents of racial harassment on campus. The college also developed a racial harassment policy, established procedures for handling racial incidents, and instituted a workshop on racial harassment as part of the freshman orientation program. In addition, the college established a staff position with responsibility for improving race relations, and is developing programs on racial and cultural diversity.

Asian American Admissions Reviews

During FY 1990, OCR concluded major compliance reviews regarding possible discrimination in college admissions against Asian American students at the University of California at Los Angeles (UCLA) and Harvard University. The reviews were initiated in response to allegations that admissions policies or practices at the two universities limited the enrollment of Asian Americans. Title VI prohibits use of restrictions on admissions that are based on race, color, or national origin.

In the UCLA review, OCR determined that 75 of the graduate programs were in compliance. There were insufficient records to determine whether eight other graduate programs were in compliance and these programs were placed on recordkeeping requirements. OCR will monitor admissions for these programs for the next three years and will make determinations regarding compliance at the end of the three-year period. OCR found that UCLA discriminated against Asian Americans in admission to the graduate mathematics program. Asian and white applicants were admitted at significantly different rates, and these differences could not be explained by the application of race neutral admissions criteria. In response to OCR's finding of discrimination, UCLA provided additional information, which is currently under consideration. The investigation of UCLA's undergraduate admissions policy is continuing.

In the Harvard review, OCR examined ten years of admissions information, including computer tapes, student files, and thousands of summary evaluations of individual applicants by admissions staff. The review focused on the significantly lower rate of acceptance of Asian American applicants in comparison to white applicants, and the possible existence of a quota that limited Asian American admissions. OCR determined that Harvard's undergraduate admissions policies and practices did not discriminate against Asian Americans. (Harvard's graduate admissions policies were not at issue in the investigation.) OCR found that although Asian Americans were admitted at a lower rate than white applicants, the disparity in admission rates was the result of preferences given to children of alumni and recruited athletes — two groups of applicants who are predominantly white. OCR concluded that these preferences were legally permissible and were not pretexts for discrimination. Further, OCR found no evidence of any quotas which affected Asian American admissions.

SEX DISCRIMINATION

Complaints alleging discrimination based on sex accounted for 9 percent of complaints filed against postsecondary schools. Several of the complaints concerned equal athletic opportunity and sexual harassment of students and employees.

Sexual Harassment

Sexual harassment is prohibited under Title IX when it establishes an intimidating, hostile, or offensive environment. OCR received a complaint alleging that an instructor at Highline Community College (Washington) discriminated against female students in a history course by subjecting them to sexual harassment. The complaint also alleged the college had inadequate procedures for investigating Title IX compliance issues.

OCR's investigation established that one instructor asked personal questions of women students, inquiring as to their marital status, personal conduct, and commenting on his own lifestyle. Students testified that the instructor's remarks were unsolicited, unrelated to course content, and offensive. One student dropped the course because of the unpleasant environment created by the instructor's comments. The complainant asserted that the instructor's conduct, including behavior during office discussions, interfered with her ability to participate in or benefit from the course. Despite the concerns this student expressed, the instructor persisted in making sex-based comments.

OCR's investigation concluded that, as a result of the instructor's behavior, the college created a hostile academic environment for female students. Further, the complainant's internal grievance was not resolved by the college in an equitable manner, also in violation of Title IX.

A comprehensive settlement was negotiated with the college. The instructor received a written reprimand and the college proceeded to monitor his classes for the next three academic quarters.

In addition, the instructor was required to meet with the college president to discuss classroom decorum and later received mandatory awareness training. Students received a letter of apology from Highline and were offered the opportunity to retake the history course, at no cost, from another instructor at the college. The college also developed new grievance procedures for the prompt and equitable resolution of Title IX complaints, including sexual harassment issues. Training was provided to Highline faculty on sexual harassment and on the new Title IX grievance procedures. The new procedures affect approximately 7,300 students enrolled at Highline.

Intercollegiate Athletics

OCR received a complaint that the University of Wisconsin was not providing equal opportunity to female athletes. OCR conducted an investigation of the University of Wisconsin's intercollegiate athletics program to determine whether the university was in compliance with Title IX.

While comprising 51 percent of the student enrollment, women comprised only 32 percent of participants in Wisconsin's athletics program. Wisconsin was unable to demonstrate that the interests and abilities of women had been equally effectively accommodated by the women's athletic program, which consisted of 11 women's teams. OCR found that the university had never conducted an assessment to determine the athletic interests and abilities of its students.

While an assessment is not required by the Title IX regulation, institutions where students of one sex are significantly underrepresented in their athletics program should conduct an assessment to determine whether their athletics program equally effectively accommodates the interests and abilities of male and female students. Under Title IX, a college or university is not required to offer particular sports, or the same sports, for each sex; an institution also is not required to offer an equal number of sports for each sex. However, an institution must accommodate to the same degree the athletic interests and abilities of each sex in the selection of sports.

In response to OCR's investigation, Wisconsin agreed to assess the interests and abilities of students in intercollegiate athletics and adjust its athletic program in accordance with the findings. This commitment will affect the entire 40,000 student enrollment at the university.

Title IX establishes separate legal standards for the provision of equal opportunity in athletic financial assistance (scholarships) and in program areas. OCR determined that athletic financial assistance that Wisconsin made available to men and women was substantially proportionate to their participation rates, as required by the regulation. The university also provided male and female athletes equivalent benefits and opportunities in all program areas (e.g., equipment, housing, travel, coaching) except in the recruitment of student athletes. For example, men's programs accounted for 88 percent of recruitment expenditures compared with 12 percent of recruitment expenditures by women's programs. OCR considered the disparities in recruitment substantial enough to deny equality of athletic opportunity to female athletes in violation of Title IX. In response to this finding, Wisconsin agreed to provide equivalent financial resources in men's and women's recruiting programs.

OCR also addressed an emerging Title IX intercollegiate athletic financial assistance compliance problem in Mississippi. As a result of two compliance reviews conducted in Mississippi, OCR discovered that postsecondary institutions' compliance with various rules of the Mississippi Community and Junior College Association (MCJCA) might result in these member institutions' violating Title IX. To address this problem, OCR sent MCJCA a detailed letter about Title IX and OCR's

December 11, 1979, policy interpretation on athletics and also conducted meetings and training sessions with key staff of MCJCA. Through these efforts, MCJCA agreed to take appropriate actions to avoid the possibility of compliance problems for its member institutions throughout the State.

POLICY GUIDANCE

During FY 1990, OCR issued policy and legal guidance on several postsecondary education issues, including the investigation of college admission practices, application of Title IX religious exemptions, and the effect of academic freedom on recordkeeping requirements. An internal manual for conducting investigations of athletic programs under Title IX by regional office investigators also was developed. The manual clarifies OCR's procedures for investigations based on the experience of the regional offices and restates OCR's policies for investigating athletics programs.

ENFORCEMENT ACTIVITIES

During FY 1990, OCR filed one new administrative enforcement action against a postsecondary institution. A Notice of Opportunity for Hearing was issued, on February 13, 1990, to DePaul University (Illinois) for denying OCR access to information to investigate a complaint regarding the readmission of a handicapped student to DePaul's law school. Shortly after the Notice was filed, DePaul allowed OCR access to the necessary information; OCR then proceeded with its investigation. The case was dismissed by the ALJ on June 18, 1990.

OCR also obtained a settlement agreement with Ramapo College (New Jersey). This case concerned interpreter services for hearing-impaired students. The agreement requires that the college provide auxiliary aids and reimbursement to the complainant for his out of pocket costs. On December 7, 1989, the case was dismissed by the ALJ.

NATIONAL ENFORCEMENT STRATEGY IMPACT

Under the National Enforcement Strategy, OCR will be giving special attention during FY 1991 to three postsecondary educational equity issues:

- Racial Harassment;
- Discrimination in Athletic Programs Based on Sex; and
- Race Discrimination in College Admissions and Financial Aid Programs.

CHAPTER IV - OTHER EDUCATION PROVIDERS - CIVIL RIGHTS PROGRAM

The Department of Education extends financial assistance to institutions other than school districts and colleges and universities. These additional recipients include state and local vocational rehabilitation agencies, proprietary schools, correctional institutions, libraries, and museums. As recipients of Federal funds, these institutions are covered by the civil rights laws.

SELECT ISSUES

During FY 1990, the majority of complaints filed with OCR against such recipients alleged discrimination based on handicap. A number of complaints concerned employment and access to programs and facilities. Below are examples of OCR's activities in these compliance areas.

Employee Termination

Under Section 504, a recipient may not participate in a contractual relationship that has the effect of discriminating against qualified handicapped persons. A complaint was filed alleging that Pathways, Inc., which contracts with the Maine Department of Human Services to provide training services for vocational rehabilitation clients, terminated a production supervisor because of his handicap. The employee, who has a history of heart disease, had been with Pathways for more than 13 years.

Pathways maintained that the employee vacated his position voluntarily when he took a leave of absence. Also, Pathways indicated that the employee's position was scheduled to be eliminated because of budgetary problems.

OCR's investigation determined that the employee gave no notice to Pathways that he intended to vacate his position. His leave of absence was due to emergency surgery and a required recuperation period. Also, the hiring of additional supervisors by Pathways was not consistent with the budgetary necessity Pathways used in justifying the employee's termination. OCR found no problems regarding the complainant's work performance.

The decision to terminate the employee occurred one day after Pathways received a medical certificate indicating that the employee needed a temporary reduced work schedule upon his return to work. OCR concluded that Pathways' actions constituted discrimination based on the employee's medical condition. Because of its contractual relationship, the Maine Department of Human Services also was found in violation of Section 504.

In seeking remedial action, OCR sought back pay and reinstatement of the complainant. However, the complainant later notified OCR that he reached a satisfactory monetary agreement with Pathways. The case was closed after Pathways and the Maine Department of Human Services submitted assurances of future compliance with the law.

Accessibility

Under Section 504 a qualified handicapped person may not be excluded from an education program because the institution's facilities are inaccessible or unusable. OCR investigated complaints against two California proprietary schools. The complaints alleged that the schools' programs and facilities were inaccessible to mobility-impaired persons.

In the first complaint, Pacific Coast College offered a Hotel and Resort Operations program on a second floor, accessible only by stairs. A student who is mobility-impaired was informed that the course would not be relocated to the first floor. As a result, the handicapped student filed a complaint with OCR. OCR obtained an agreement from the college that this program would be relocated to an accessible location in the event that a mobility-impaired student elected to enroll.

In the second complaint, Pacific Coast Technical Institute offered a Drafting program on a second floor, also accessible only by stairs. The complainant, who wears steel braces, was required to remain on the second floor for approximately five hours each day. This prevented him from using the male students' restroom, water fountains, vending machines, telephones, and administrative offices located on the building's first floor. The institute advised OCR that the Drafting program was being phased out and that it planned to move when its lease expired. The institute made commitments to make its new facility readily accessible to handicapped persons. In the event the Drafting program is reinstated before the move, the institute agreed to provide immediate program accessibility. The institute also agreed to make restrooms and other facilities accessible to mobility-impaired persons.

Homeless Students

Children whose families are homeless are protected by the civil rights laws, including Section 504. Accordingly, a school district must annually identify and locate every qualified handicapped person, including homeless children, who are not receiving a public education. A school district also must annually take appropriate steps to notify handicapped persons and their parents or guardians of its duty to provide a free appropriate public education to each qualified handicapped person in its jurisdiction. In response to a request from the Sasha Bruce Youthworks, Inc., OCR conducted in-service training for counselors and administrators of an organization that serves approximately 1,000 homeless and runaway youth in the Washington, D.C. metropolitan area. Subsequent to the training, the organization initiated contact with the D.C. Public Schools and has now developed a cooperative relationship with the school system in ensuring that homeless children are receiving the protection of the law.

POLICY GUIDANCE

On April 4, 1990, OCR issued a memorandum to presidents of institutions with vocational education programs about the responsibilities of providers of apprenticeship programs under Section 504. The memorandum clarifies that the law applies to apprenticeship training programs that are provided directly by the recipient or indirectly through arrangements recipients may make with unions or other outside sponsors. The memorandum also provides guidance on who is a qualified handicapped person, what Section 504 prohibits, recordkeeping requirements, and discusses the availability of OCR technical assistance.

ENFORCEMENT ACTIVITIES

During FY 1990, there were no administrative enforcement activities affecting departmental recipients other than school districts and postsecondary institutions.

FINAL COMMENTS

During FY 1990, OCR received 3,382 discrimination complaints, the highest number of complaints in the agency's history. In applying the Federal civil rights laws in these cases, OCR is expanding access to quality education and supporting the national education goals. Our efforts touch children who otherwise would have been thwarted at the outset or early in their school progress. These children are given the opportunity to develop their talents to the fullest. At the postsecondary level, the elimination of barriers allowed students to pursue their educational and career objectives.

OCR is first and foremost a law enforcement agency. However, we are committed to the perspective that we can work cooperatively with the thousands of administrators, school officials, and others who guide the American educational process. Such efforts are critical to establishing the groundwork for the achievement of equal educational opportunity and quality education for all people.

SECRETARY'S COMMENTS

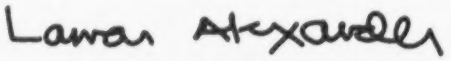
One of the highest missions of the Department of Education is to guarantee equal educational opportunity for all persons. We are committed to this mission for two reasons: first because it is right, and second because education provides the foundation for equal opportunity in every other area of life.

Many people fail to realize that the challenges of enforcing civil rights legislation are greater today than ever before, if only because questions of educational equity are far more complex than in the past. For this reason, I intend to make a special effort to work with the Congress, other members of the Executive Branch, and with the education community to ensure that all Americans enjoy the full benefits of a free and open society.

America as the world's first and perhaps only universal nation is deeply rooted in the soil of fairness and equity. Neither government nor our nation's school systems can guarantee educational equity without the active consent and cooperation of each of its citizens. To maintain support for effective civil rights enforcement, the Department of Education will continue to solicit the involvement of parents, students, school administrators and other community leaders — all of whom have a vested interest in strengthening our historic commitment to fairness.

In his AMERICA 2000 education strategy, the President has charted a course designed to bring our children within reach of the national education goals. Guaranteeing equal opportunity can only aid in this crusade for educational excellence.

To a degree, our schools are not performing as well as they should because in the past some of our citizens have lost a sense of ownership of the mainstream of American life and have communicated their frustration and despair to succeeding generations. Instead of looking at education as a way out of this state of thinking, too many may regard it as just "way out" — way out of reach, way out of grasp, way out of the real world as they perceive it. Together we can help change that misperception, realize our national education goals and infuse society with a renewed sense of fairness and opportunity.



Lamar Alexander
Secretary

REGIONAL CIVIL RIGHTS ADDRESSES

Region I

Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont

Office for Civil Rights, Region I
U.S. Department of Education
J.W. McCormack Post Office and Courthouse, Room 222, 01-0061
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(617) 223-9662; TDD (617) 223-9695

Region II

New Jersey, New York, Puerto Rico, Virgin Islands

Office for Civil Rights, Region II
U.S. Department of Education
26 Federal Plaza
33rd Floor, Room 33-130, 02-1010
New York, NY 10278-0082
(212) 264-4633; TDD (212) 264-9464

Region III

Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia

Office for Civil Rights, Region III
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3535 Market Street, Room 6300, 03-2010
Philadelphia, PA 19104-3326
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Region IV

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Region V

Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin

Office for Civil Rights, Region V
U.S. Department of Education
401 South State Street, Room 700C, 05-4010
Chicago, IL 60605-1202
(312) 886-3456; TDD (312) 353-2541

Region VI

Arkansas, Louisiana, New Mexico, Oklahoma, Texas

Office for Civil Rights, Region VI
U.S. Department of Education
1200 Main Tower Bldg., Suite 2260, 06-5010
Dallas, TX 75202-9998
(214) 767-3959; TDD (214) 767-3639

Region VII

Iowa, Kansas, Missouri, Nebraska

Office for Civil Rights, Region VII
U.S. Department of Education
10220 North Executive Hill Boulevard, 8th Floor
Kansas City, MO 64153-1367
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Region VIII

Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming

Office for Civil Rights, Region VIII
U.S. Department of Education
Federal Building, Suite 310, 08-7010
1244 Speer Boulevard
Denver, CO 80204-3582
(303) 844-5695; TDD (303) 844-3417

Region IX

Arizona, California, Hawaii, Nevada, Guam, Trust Territory of the Pacific Islands, American Samoa

Office for Civil Rights, Region IX
U.S. Department of Education
Old Federal Building
50 United Nations Plaza, Room 239, 09-8010
San Francisco, CA 94102-4102
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Region X

Alaska, Idaho, Oregon, Washington

Office for Civil Rights, Region X
U.S. Department of Education
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